

Bill No. SB 1366

Barcode 785092

CHAMBER ACTION

Senate

House

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The Committee on Communications and Public Utilities  
(Constantine) recommended the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

Section 1. Section 366.8260, Florida Statutes, is  
created to read:

366.8260 Storm-recovery financing.--

(1) DEFINITIONS.--As used in this section, the term:

(a) "Ancillary agreement" means any bond, insurance  
policy, letter of credit, reserve account, surety bond, swap  
arrangement, hedging arrangement, liquidity or credit support  
arrangement, or other financial arrangement entered into in  
connection with the issuance of storm-recovery bonds.

(b) "Assignee" means any entity, including, but not  
limited to, a corporation, limited liability company,  
partnership or limited partnership, public authority, trust,  
financing entity, or other legally recognized entity to which  
an electric utility assigns, sells, or transfers, other than

Bill No. SB 1366

Barcode 785092

1 as security, all or a portion of its interest in or right to  
 2 storm-recovery property. The term also includes any entity to  
 3 which an assignee assigns, sells, or transfers, other than as  
 4 security, its interest in or right to storm-recovery property.

5 (c) "Commission" means the Florida Public Service  
 6 Commission.

7 (d) "Electric utility" or "utility" has the same  
 8 meaning as that provided in s. 366.8255.

9 (e) "Financing costs" means:

10 1. Interest and acquisition, defeasance, or redemption  
 11 premiums that are payable on storm-recovery bonds;

12 2. Any payment required under an ancillary agreement  
 13 and any amount required to fund or replenish a reserve account  
 14 or other accounts established under the terms of any  
 15 indenture, ancillary agreement, or other financing documents  
 16 pertaining to storm-recovery bonds;

17 3. Any other cost related to issuing, supporting,  
 18 repaying, and servicing storm-recovery bonds, including, but  
 19 not limited to, servicing fees, accounting and auditing fees,  
 20 trustee fees, legal fees, consulting fees, administrative  
 21 fees, placement and underwriting fees, capitalized interest,  
 22 rating agency fees, stock exchange listing and compliance  
 23 fees, and filing fees, including costs related to obtaining  
 24 the financing order;

25 4. Any taxes and license fees imposed on the revenues  
 26 generated from the collection of storm-recovery charges;

27 5. Any income taxes resulting from the collection of  
 28 storm-recovery charges in any such case whether paid, payable,  
 29 or accrued; or

30 6. Any state and local taxes, franchise, gross  
 31 receipts, and other taxes or similar charges, including but

Bill No. SB 1366

Barcode 785092

1 not limited to, regulatory assessment fees, in any such case  
2 whether paid, payable, or accrued.

3 (f) "Financing order" means an order under subsection  
4 (2) which allows for the issuance of storm-recovery bonds, the  
5 imposition, collection, and periodic adjustments of  
6 storm-recovery charges, and the creation of storm-recovery  
7 property.

8 (g) "Financing party" means holders of storm-recovery  
9 bonds and trustees, collateral agents, or other persons acting  
10 for the benefit of holders of storm-recovery bonds.

11 (h) "Financing statement" has the same meaning as that  
12 provided in Article 9 of the Uniform Commercial Code.

13 (i) "Pledgee" means a financing party to which an  
14 electric utility or its successors or assignees mortgages,  
15 negotiates, hypothecates, pledges, or creates a security  
16 interest or lien on all or any portion of its interest in or  
17 right to storm-recovery property.

18 (j) "Storm" means a named tropical storm or hurricane  
19 that occurred during calendar year 2004 or thereafter.

20 (k) "Storm-recovery activity" means any activity or  
21 activities by or on behalf of an electric utility in  
22 connection with the restoration of service associated with  
23 electric power outages affecting customers of an electric  
24 utility as the result of a storm or storms, including, but not  
25 limited to, mobilization, staging, and construction,  
26 reconstruction, replacement, or repair of electric generation,  
27 transmission, or distribution facilities.

28 (l) "Storm-recovery bonds" means bonds, debentures,  
29 notes, certificates of participation, certificates of  
30 beneficial interest, certificates of ownership, or other  
31 evidences of indebtedness or ownership that are issued by an

Bill No. SB 1366

Barcode 785092

1 electric utility or an assignee pursuant to a financing order,  
 2 the proceeds of which are used directly or indirectly to  
 3 recover, finance, or refinance commission-approved  
 4 storm-recovery costs and financing costs, and that are secured  
 5 by or payable from storm-recovery property.

6 (m) "Storm-recovery charge" means the amounts  
 7 authorized by the commission to recover, finance, or refinance  
 8 storm-recovery costs and financing costs as provided for in a  
 9 financing order to be imposed on all customer bills and  
 10 collected by an electric utility or its successors or  
 11 assignees, or a collection agent, in full through a charge  
 12 that is separate and apart from the electric utility's base  
 13 rates, which charge shall be paid by all customers receiving  
 14 transmission or distribution service from the electric utility  
 15 or its successors or assignees under commission-approved rate  
 16 schedules or under special contracts, even if the customer  
 17 elects to purchase electricity from an alternative electricity  
 18 supplier following a fundamental change in regulation of  
 19 public utilities in this state.

20 (n) "Storm-recovery costs" means, at the option and  
 21 request of the electric utility, and as approved by the  
 22 commission pursuant to sub-subparagraph (2)(b)1.b., costs  
 23 incurred or to be incurred by an electric utility in  
 24 undertaking a storm-recovery activity. Such costs shall be net  
 25 of applicable insurance proceeds and, where determined  
 26 appropriate by the commission, shall include adjustments for  
 27 normal capital replacement and operating costs, lost revenues,  
 28 or other potential offsetting adjustments. Storm-recovery  
 29 costs shall include the costs to finance any deficiency or  
 30 deficiencies in storm-recovery reserves until such time as  
 31 storm-recovery bonds are issued, and costs of retiring any

Bill No. SB 1366

Barcode 785092

1 existing indebtedness relating to storm-recovery activities.

2 (o) "Storm-recovery property" means:

3 1. All rights and interests of an electric utility or  
4 successor or assignee of the electric utility under a  
5 financing order, including the right to impose, bill, collect,  
6 and receive storm-recovery charges authorized in the financing  
7 order and to obtain periodic adjustments to such charges as  
8 provided in the financing order.

9 2. All revenues, collections, claims, rights to  
10 payments, payments, money, or proceeds arising from the rights  
11 and interests specified in subparagraph 1., regardless of  
12 whether such revenues, collections, claims, rights to payment,  
13 payments, money, or proceeds are imposed, billed, received,  
14 collected, or maintained together with or commingled with  
15 other revenues, collections, rights to payment, payments,  
16 money, or proceeds.

17 (p) "Storm-recovery reserve" means an electric utility  
18 storm reserve or such other similar reserve established by law  
19 or rule or pursuant to order of the commission.

20 (q) "Uniform Commercial Code" has the same meaning as  
21 that provided in s. 671.101.

22 (2) FINANCING ORDERS.--

23 (a) An electric utility may petition the commission  
24 for a financing order. For each petition, the electric utility  
25 shall:

26 1. Describe the storm-recovery activities that the  
27 electric utility has undertaken or proposes to undertake and  
28 describe the reasons for undertaking the activities.

29 2. Set forth the known storm-recovery costs and  
30 estimate the costs of any storm-recovery activities that are  
31 not completed, or for which the costs are not yet known, as

1 identified and requested by the electric utility.

2 3. Set forth the level of the storm-recovery reserve  
3 that the utility proposes to establish or replenish and has  
4 determined would be appropriate to recover through  
5 storm-recovery bonds and is seeking to so recover and such  
6 level that the utility is funding or will seek to fund through  
7 other means, together with a description of the factors and  
8 calculations used in determining the amounts and methods of  
9 recovery.

10 4. Indicate whether the electric utility proposes to  
11 finance all or a portion of the storm-recovery costs using  
12 storm-recovery bonds. If the electric utility proposes to  
13 finance a portion of such costs, the electric utility shall  
14 identify that portion in the petition.

15 5. Estimate the financing costs related to the  
16 storm-recovery bonds proposed under subparagraph 4.

17 6. Estimate the storm-recovery charges necessary to  
18 recover the storm-recovery costs and financing costs and the  
19 period for recovery of such costs.

20 7. Estimate any cost savings or demonstrate how it  
21 would avoid or significantly mitigate rate impacts to  
22 customers resulting from financing storm-recovery costs with  
23 storm-recovery bonds as opposed to the traditional method of  
24 recovering such costs from customers and through alternative  
25 financing methods available to the electric utility.

26 8. File with the petition direct testimony supporting  
27 the petition.

28 (b)1. Proceedings on a petition submitted pursuant to  
29 paragraph (a) shall begin with a petition by an electric  
30 utility and shall be disposed of in accordance with the  
31 provisions of chapter 120 and applicable rules, except that

Bill No. SB 1366

Barcode 785092

1 the provisions of this section, to the extent applicable,  
2 shall control.

3 a. Within 7 days after the filing of a petition, the  
4 commission shall publish a case schedule, which schedule shall  
5 place the matter before the commission on an agenda that will  
6 permit a commission decision no later than 120 days after the  
7 date the petition is filed.

8 b. No later than 135 days after the date the petition  
9 is filed, the commission shall issue a financing order or an  
10 order rejecting the petition. A party to the commission  
11 proceeding may petition the commission for reconsideration of  
12 the financing order within 5 days after the date of its  
13 issuance. The commission shall issue a financing order  
14 authorizing financing of reasonable and prudent storm-recovery  
15 costs and financing costs if the commission finds that the  
16 issuance of the storm-recovery bonds and the imposition of  
17 storm-recovery charges authorized by the order are reasonably  
18 expected to result in lower overall costs or would avoid or  
19 significantly mitigate rate impacts to customers as compared  
20 with alternative methods of financing or recovering  
21 storm-recovery costs. Any determination of whether  
22 storm-recovery costs are reasonable and prudent shall be made  
23 with reference to the general public interest in, and the  
24 scope of effort required to provide, the safe and expeditious  
25 restoration of electric service.

26 2. In a financing order issued to an electric utility,  
27 the commission shall:

28 a. Except as provided in sub-subparagraph f. and in  
29 subparagraph 4., specify the amount of storm-recovery costs  
30 and the level of storm-recovery reserves, taking into  
31 consideration, to the extent the commission deems appropriate,

Bill No. SB 1366

Barcode 785092

1 any other methods used to recover these costs, and describe  
 2 and estimate the amount of financing costs which may be  
 3 recovered through storm-recovery charges; and specify the  
 4 period over which such costs may be recovered.

5 b. Determine that the proposed structuring, expected  
 6 pricing, and financing costs of the storm-recovery bonds are  
 7 reasonably expected to result in lower overall costs or would  
 8 avoid or significantly mitigate rate impacts to customers as  
 9 compared with alternative methods of financing or recovering  
 10 storm-recovery costs.

11 c. Provide that, for the period specified pursuant to  
 12 sub-subparagraph a., the imposition and collection of  
 13 storm-recovery charges authorized in the financing order shall  
 14 be paid by all customers receiving transmission or  
 15 distribution service from the electric utility or its  
 16 successors or assignees under commission-approved rate  
 17 schedules or under special contracts, even if the customer  
 18 elects to purchase electricity from an alternative electric  
 19 supplier following a fundamental change in regulation of  
 20 public utilities in the state.

21 d. Determine what portion, if any, of the  
 22 storm-recovery reserves must be held in a funded reserve and  
 23 any limitations on how the reserve may be held, accessed, or  
 24 used.

25 e. Include a formula-based mechanism for making  
 26 expeditious periodic adjustments in the storm-recovery charges  
 27 that customers are required to pay under the financing order  
 28 and for making any adjustments that are necessary to correct  
 29 for any overcollection or undercollection of the charges or to  
 30 otherwise ensure the timely payment of storm-recovery bonds  
 31 and financing costs and other required amounts and charges



Bill No. SB 1366

Barcode 785092

1 payable in connection with the storm-recovery bonds.

2 f. Specify the storm-recovery property that is, or  
3 shall be, created in favor of an electric utility or its  
4 successors or assignees and that shall be used to pay or  
5 secure storm-recovery bonds and financing costs.

6 g. Specify the degree of flexibility to be afforded to  
7 the electric utility in establishing the terms and conditions  
8 of the storm-recovery bonds, including, but not limited to,  
9 repayment schedules, interest rates, and other financing  
10 costs.

11 h. Provide that storm-recovery charges be allocated to  
12 the customer classes using the criteria set out in s.  
13 366.06(1), in the manner in which these costs or their  
14 equivalent were allocated in the cost-of-service study  
15 approved in connection with the electric utility's last rate  
16 case. If the electric utility's last rate case was resolved by  
17 a settlement agreement, the the cost-of-service methodology  
18 filed by the electric utility in that case shall be used.

19 i. Provide that, after the final terms of an issuance  
20 of storm-recovery bonds have been established and prior to the  
21 issuance of storm-recovery bonds, the electric utility shall  
22 determine the resulting initial storm-recovery charge in  
23 accordance with the financing order and such initial  
24 storm-recovery charge shall be final and effective upon the  
25 issuance of such storm-recovery bonds without further  
26 commission action.

27 j. Include any other conditions that the commission  
28 considers appropriate and that are not otherwise inconsistent  
29 with this section.

30

31 In performing the responsibilities of this subparagraph and

Bill No. SB 1366

Barcode 785092

1 subparagraph 5., the commission may engage outside consultants  
2 or counsel, which consultant or counsel must be mutually  
3 agreed upon by the commission and the electric utility. Any  
4 expenses associated with such services shall be included as  
5 part of financing costs and included in storm-recovery  
6 charges.

7 3. A financing order issued to an electric utility may  
8 provide that creation of the electric utility's storm-recovery  
9 property pursuant to sub-subparagraph 2.f. is conditioned  
10 upon, and shall be simultaneous with, the sale or other  
11 transfer of the storm-recovery property to an assignee and the  
12 pledge of the storm-recovery property to secure storm-recovery  
13 bonds.

14 4. If the commission issues a financing order, the  
15 electric utility shall file with the commission at least  
16 biannually a petition or a letter applying the formula-based  
17 mechanism pursuant to sub-subparagraph 2.e. and, based on  
18 estimates of consumption for each rate class and other  
19 mathematical factors, requesting administrative approval to  
20 make the adjustments described in sub-subparagraph 2.e. The  
21 review of such a request shall be limited to determining  
22 whether there is any mathematical error in the application of  
23 the formula-based mechanism relating to the appropriate amount  
24 of any overcollection or undercollection of storm-recovery  
25 charges and the amount of an adjustment. Such adjustments  
26 shall ensure the recovery of revenues sufficient to provide  
27 for the payment of principal, interest, acquisition,  
28 defeasance, financing costs, or redemption premium and other  
29 fees, costs, and charges in respect of storm-recovery bonds  
30 approved under the financing order. Within 60 days after  
31 receiving an electric utility's request pursuant to this

Bill No. SB 1366

Barcode 785092

1 paragraph, the commission shall either approve the request or  
 2 inform the electric utility of any mathematical errors in its  
 3 calculation. If the commission informs the utility of  
 4 mathematical errors in its calculation, the utility may  
 5 correct its error and refile its request. The timeframes  
 6 previously described in this paragraph shall apply to a  
 7 refiled request.

8       5. Within 120 days after the issuance of  
 9 storm-recovery bonds, the electric utility shall file with the  
 10 commission information on the actual costs of the  
 11 storm-recovery-bond issuance. The commission shall review such  
 12 information to determine if such costs incurred in the  
 13 issuance of the bonds resulted in the lowest overall costs  
 14 that were reasonably consistent with market conditions at the  
 15 time of the issuance and the terms of the financing order. The  
 16 commission may disallow any incremental issuance costs in  
 17 excess of the lowest overall costs by requiring the utility to  
 18 make a contribution to the storm reserve in an amount equal to  
 19 the excess of actual issuance costs incurred, and paid for out  
 20 of storm recovery bond proceeds, and the lowest overall  
 21 issuance costs as determined by the commission. The commission  
 22 may not make adjustments to the storm-recovery charges for any  
 23 such excess issuance costs.

24       6. Subsequent to the earlier of the transfer of  
 25 storm-recovery property to an assignee or the issuance of  
 26 storm-recovery bonds authorized thereby, a financing order is  
 27 irrevocable and, except as provided in subparagraph 4. and  
 28 paragraph (c), the commission may not amend, modify, or  
 29 terminate the financing order by any subsequent action or  
 30 reduce, impair, postpone, terminate, or otherwise adjust  
 31 storm-recovery charges approved in the financing order. After

Bill No. SB 1366

Barcode 785092

1 the issuance of a financing order, the electric utility  
 2 retains sole discretion regarding whether to assign, sell, or  
 3 otherwise transfer storm-recovery property or to cause the  
 4 storm-recovery bonds to be issued, including the right to  
 5 defer or postpone such assignment, sale, transfer, or  
 6 issuance.

7       (c) At the request of an electric utility, the  
 8 commission may commence a proceeding and issue a subsequent  
 9 financing order that provides for retiring and refunding  
 10 storm-recovery bonds issued pursuant to the original financing  
 11 order if the commission finds that the subsequent financing  
 12 order satisfies all of the criteria specified in paragraph  
 13 (b). Effective on retirement of the refunded storm-recovery  
 14 bonds and the issuance of new storm-recovery bonds, the  
 15 commission shall adjust the related storm-recovery charges  
 16 accordingly.

17       (d) Within 30 days after the commission issues an  
 18 order pursuant to paragraph (b) or a decision denying a  
 19 request for reconsideration or, if the request for  
 20 reconsideration is granted, within 30 days after the  
 21 commission issues its decision on reconsideration, an  
 22 adversely affected party may petition for judicial review in  
 23 the Florida Supreme Court. The petition for review shall be  
 24 served upon the executive director of the commission  
 25 personally or by service at the office of the commission.  
 26 Review on appeal shall be based solely on the record before  
 27 the commission and briefs to the court and shall be limited to  
 28 determining whether the order issued pursuant to paragraph  
 29 (b), or the order on reconsideration, conforms to the  
 30 constitution and laws of this state and the United States and  
 31 is within the authority of the commission under this section.

Bill No. SB 1366

Barcode 785092

1 Inasmuch as delay in the determination of the appeal of a  
 2 financing order will delay the issuance of storm-recovery  
 3 bonds, thereby diminishing savings to customers which might be  
 4 achieved if such bonds were issued as contemplated by a  
 5 financing order, the Supreme Court shall proceed to hear and  
 6 determine the action as expeditiously as practicable and give  
 7 the action precedence over other matters not accorded similar  
 8 precedence by law.

9       (e)1. A financing order remains in effect until the  
 10 storm-recovery bonds issued pursuant to the order have been  
 11 paid in full and the commission-approved financing costs of  
 12 such bonds have been recovered in full.

13       2. A financing order issued to an electric utility  
 14 shall remain in effect and unabated notwithstanding the  
 15 reorganization, bankruptcy, or other insolvency proceedings of  
 16 the electric utility or its successors or assignees.

17       (3) EXCEPTIONS TO COMMISSION JURISDICTION.--

18       (a) If the commission issues a financing order to an  
 19 electric utility pursuant to this section, the commission may  
 20 not, in exercising its powers and carrying out its duties  
 21 regarding any matter within its authority pursuant to this  
 22 chapter, consider the storm-recovery bonds issued pursuant to  
 23 the order to be the debt of the electric utility other than  
 24 for federal income tax purposes, consider the storm-recovery  
 25 charges paid under the order to be the revenue of the electric  
 26 utility for any purpose, or consider the storm-recovery costs  
 27 or financing costs specified in the order to be the costs of  
 28 the electric utility, nor may the commission determine any  
 29 action taken by an electric utility which is consistent with  
 30 the order to be unjust or unreasonable.

31       (b) The commission may not order or otherwise directly

Bill No. SB 1366

Barcode 785092

1 or indirectly require an electric utility to use  
2 storm-recovery bonds to finance any project, addition, plant,  
3 facility, extension, capital improvement, equipment, or any  
4 other expenditure, unless the electric utility has filed a  
5 petition under paragraph (2)(a) to finance such expenditure  
6 using storm-recovery bonds. The commission may not refuse to  
7 allow an electric utility to recover costs for storm-recovery  
8 activities in an otherwise permissible fashion, or refuse or  
9 condition authorization or approval pursuant to s. 366.04 of  
10 the issuance and sale by an electric utility of securities or  
11 the assumption by it of liabilities or obligations, solely  
12 because of the potential availability of storm-recovery  
13 financing.

14 (4) ELECTRIC UTILITY DUTIES.--

15 (a) The electric bills of an electric utility that has  
16 obtained a financing order and issued storm-recovery bonds  
17 must explicitly reflect that a portion of the charges on such  
18 bill represents storm-recovery charges approved in a financing  
19 order issued to the electric utility and, if the  
20 storm-recovery property has been transferred to an assignee,  
21 must include a statement to the effect that the assignee is  
22 the owner of the rights to storm-recovery charges and that the  
23 electric utility or any other entity, if applicable, is acting  
24 as a collection agent or servicer for the assignee. The tariff  
25 applicable to customers must indicate the storm-recovery  
26 charge and the ownership of that charge. The commission shall  
27 determine whether to require electric utilities to include  
28 such information or amounts owed with respect to the  
29 storm-recovery property as a separate line item on individual  
30 electric bills.

31 (b) The failure of an electric utility to comply with

Bill No. SB 1366

Barcode 785092

1 this subsection shall not invalidate, impair, or affect any  
 2 financing order, storm-recovery property, storm-recovery  
 3 charge, or storm-recovery bonds but shall subject the electric  
 4 utility to penalties under s. 366.095.

5 (5) STORM-RECOVERY PROPERTY.--

6 (a)1. All storm-recovery property that is specified in  
 7 a financing order shall constitute an existing, present  
 8 property right or interest therein, notwithstanding that the  
 9 imposition and collection of storm-recovery charges depends on  
 10 the electric utility to which the order is issued performing  
 11 its servicing functions relating to the collection of  
 12 storm-recovery charges and on future electricity consumption.  
 13 Such property shall exist whether or not the revenues or  
 14 proceeds arising from the property have been billed, have  
 15 accrued, or have been collected and notwithstanding the fact  
 16 that the value or amount of the property is dependent on the  
 17 future provision of service to customers by the electric  
 18 utility or its successors or assignees.

19 2. Storm-recovery property specified in a financing  
 20 order shall continue to exist until the storm-recovery bonds  
 21 issued pursuant to the order are paid in full and all  
 22 financing costs and other costs of the bonds have been  
 23 recovered in full.

24 3. All or any portion of storm-recovery property  
 25 specified in a financing order issued to an electric utility  
 26 may be transferred, sold, conveyed, or assigned to a successor  
 27 or assignee, including an affiliate or affiliates of the  
 28 electric utility created for the limited purpose of acquiring,  
 29 owning, or administering storm-recovery property or issuing  
 30 storm-recovery bonds under the financing order. All or any  
 31 portion of storm-recovery property may be pledged to secure

Bill No. SB 1366

Barcode 785092

1 storm-recovery bonds issued pursuant to the order, amounts  
2 payable to financing parties and to counterparties under any  
3 ancillary agreements, and other financing costs. Each such  
4 transfer, sale, conveyance, assignment, or pledge by an  
5 electric utility or affiliate of an electric utility is  
6 considered to be a transaction in the ordinary course of  
7 business.

8       4. If an electric utility defaults on any required  
9 payment of charges arising from storm-recovery property  
10 specified in a financing order, a court, upon application by  
11 an interested party, and without limiting any other remedies  
12 available to the applying party, shall order the sequestration  
13 and payment of the revenues arising from the storm-recovery  
14 property to the financing parties. Any such order shall remain  
15 in full force and effect notwithstanding any reorganization,  
16 bankruptcy, or other insolvency proceedings with respect to  
17 the electric utility or its successors or assignees.

18       5. The interest of a transferee, purchaser, acquirer,  
19 assignee, or pledgee in storm-recovery property specified in a  
20 financing order issued to an electric utility, and in the  
21 revenue and collections arising from that property, is not  
22 subject to setoff, counterclaim, surcharge, or defense by the  
23 electric utility or any other person or in connection with the  
24 reorganization, bankruptcy, or other insolvency of the  
25 electric utility or any other entity.

26       6. Any successor to an electric utility, whether  
27 pursuant to any reorganization, bankruptcy, or other  
28 insolvency proceeding or whether pursuant to any merger or  
29 acquisition, sale, or other business combination, or transfer  
30 by operation of law, as a result of electric utility  
31 restructuring or otherwise, shall perform and satisfy all



Bill No. SB 1366

Barcode 785092

1 obligations of, and have the same rights under a financing  
 2 order as, the electric utility under the financing order in  
 3 the same manner and to the same extent as the electric  
 4 utility, including collecting and paying to the person  
 5 entitled to receive the revenues, collections, payments, or  
 6 proceeds of the storm-recovery property.

7 (b)1. Except as specified in this section, the Uniform  
 8 Commercial Code does not apply to storm-recovery property or  
 9 any right, title, or interest of a utility or assignee  
 10 described in subparagraph (1)(o)1., whether before or after  
 11 the issuance of the financing order. In addition, such right,  
 12 title, or interest pertaining to a financing order, including,  
 13 but not limited to, the associated storm-recovery property and  
 14 any revenues, collections, claims, rights to payment,  
 15 payments, money, or proceeds of or arising from storm-recovery  
 16 charges pursuant to such order, shall not be deemed proceeds  
 17 of any right or interest other than in the financing order and  
 18 the storm-recovery property arising from the order.

19 2. The creation, attachment, granting, perfection,  
 20 priority, and enforcement of liens and security interests in  
 21 storm-recovery property to secure storm-recovery bonds is  
 22 governed solely by this section and not by the Uniform  
 23 Commercial Code.

24 3. A valid, enforceable, and attached lien and  
 25 security interest in storm-recovery property may be created  
 26 only upon the later of:

27 a. The issuance of a financing order;

28 b. The execution and delivery of a security agreement  
 29 with a financing party in connection with the issuance of  
 30 storm-recovery bonds; or

31 c. The receipt of value for the storm-recovery bonds.

Bill No. SB 1366

Barcode 785092

1  
2 A valid, enforceable, and attached security interest shall be  
3 perfected against third parties as of the date of filing of a  
4 financing statement in the Florida Secured Transaction  
5 Registry, as such registry is defined in Article 9 of the  
6 Uniform Commercial Code, in accordance with subparagraph 4.,  
7 and shall thereafter be a continuously perfected lien; and  
8 such security interest in the storm-recovery property and all  
9 proceeds of such storm-recovery property, whether or not  
10 billed, accrued, or collected, and whether or not deposited  
11 into a deposit account and however evidenced, shall have  
12 priority in accordance with subparagraph 8. and take  
13 precedence over any subsequent judicial or other lien  
14 creditor. No continuation statement need be filed to maintain  
15 such perfection.

16 4. Financing statements required to be filed pursuant  
17 to this section shall be filed, maintained, and indexed in the  
18 same manner and in the same system of records maintained for  
19 the filing of financing statements in the Florida Secured  
20 Transaction Registry under Article 9 of the Uniform Commercial  
21 Code. The filing of such a financing statement shall be the  
22 only method of perfecting a lien or security interest on  
23 storm-recovery property.

24 5. The priority of a lien and security interest  
25 perfected under this paragraph is not impaired by any later  
26 modification of the financing order or storm-recovery property  
27 or by the commingling of funds arising from storm-recovery  
28 property with other funds, and any other security interest  
29 that may apply to those funds shall be terminated as to all  
30 funds transferred to a segregated account for the benefit of  
31 an assignee or a financing party or to an assignee or

Bill No. SB 1366

Barcode 785092

1 financing party directly.

2           6. If a default or termination occurs under the terms  
3 of the storm-recovery bonds, the financing parties or their  
4 representatives may foreclose on or otherwise enforce their  
5 lien and security interest in any storm-recovery property as  
6 if they were a secured party under Article 9 of the Uniform  
7 Commercial Code; and a court may order that amounts arising  
8 from storm-recovery property be transferred to a separate  
9 account for the financing parties' benefit, to which their  
10 lien and security interest shall apply. On application by or  
11 on behalf of the financing parties to a circuit court of this  
12 state, such court shall order the sequestration and payment to  
13 the financing parties of revenues arising from the  
14 storm-recovery property.

15           7. The interest of a pledgee of an interest or any  
16 rights in any storm-recovery property is not perfected until  
17 filing as provided in subparagraph 4.

18           8. The priority of the conflicting interests of  
19 pledgees in the same interest or rights in any storm-recovery  
20 property is determined as follows:

21           a. Conflicting perfected interests or rights of  
22 pledgees rank according to priority in time of perfection.  
23 Priority dates from the time a filing covering the interest or  
24 right is made in accordance with this paragraph.

25           b. A perfected interest or right of a pledgee has  
26 priority over a conflicting unperfected interest or right of a  
27 pledgee.

28           c. A perfected interest or right of a pledgee has  
29 priority over a person who becomes a lien creditor after the  
30 perfection of such pledgee's interest or right.

31           (c) The sale, assignment, or transfer of

Bill No. SB 1366

Barcode 785092

1 storm-recovery property is governed by this paragraph. All of  
2 the following apply to a sale, assignment, or transfer under  
3 this paragraph:

4       1. The sale, conveyance, assignment, or other transfer  
5 of storm-recovery property by an electric utility to an  
6 assignee that the parties have in the governing documentation  
7 expressly stated to be a sale or other absolute transfer is an  
8 absolute transfer and true sale of, and not a pledge of or  
9 secured transaction relating to, the transferor's right,  
10 title, and interest in, to, and under the storm-recovery  
11 property, other than for federal and state income and  
12 franchise tax purposes. After such a transaction, the  
13 storm-recovery property is not subject to any claims of the  
14 transferor or the transferor's creditors, other than creditors  
15 holding a prior security interest in the storm-recovery  
16 property perfected under paragraph (b).

17       2. The characterization of the sale, conveyance,  
18 assignment, or other transfer as a true sale or other absolute  
19 transfer under subparagraph 1. and the corresponding  
20 characterization of the transferee's property interest is not  
21 affected by:

22           a. Commingling of amounts arising with respect to the  
23 storm-recovery property with other amounts.

24           b. The retention by the transferor of a partial or  
25 residual interest, including an equity interest, in the  
26 storm-recovery property, whether direct or indirect, or  
27 whether subordinate or otherwise.

28           c. Any recourse that the transferee may have against  
29 the transferor other than any such recourse created,  
30 contingent upon, or otherwise occurring or resulting from one  
31 or more of the transferor's customers' inability to timely pay

Bill No. SB 1366

Barcode 785092

1 all or a portion of the storm-recovery charge.

2 d. Any indemnifications, obligations, or repurchase  
3 rights made or provided by the transferor, other than  
4 indemnity or repurchase rights based solely upon a  
5 transferor's customers' inability to timely pay all or a  
6 portion of the storm-recovery charge.

7 e. The responsibility of the transferor to collect  
8 storm-recovery charges.

9 f. The treatment of the sale, conveyance, assignment,  
10 or other transfer for tax, financial reporting, or other  
11 purposes.

12 g. Granting or providing to holders of the  
13 storm-recovery bonds a preferred right to the storm-recovery  
14 property or credit enhancement by the electric utility or its  
15 affiliates with respect to the storm-recovery bonds.

16 3. Any right that an electric utility has in the  
17 storm-recovery property prior to its pledge, sale, or transfer  
18 or any other right created under this section or created in  
19 the financing order and assignable under this section or  
20 assignable pursuant to a financing order shall be property in  
21 the form of a contract right. Transfer of an interest in  
22 storm-recovery property to an assignee is enforceable only  
23 upon the later of the issuance of a financing order, the  
24 execution and delivery of transfer documents to the assignee  
25 in connection with the issuance of storm-recovery bonds, and  
26 the receipt of value. An enforceable transfer of an interest  
27 in storm-recovery property to an assignee shall be perfected  
28 against all third parties, including subsequent judicial or  
29 other lien creditors, when a notice of that transfer has been  
30 given by the filing of a financing statement in accordance  
31 with subparagraph 4. The transfer shall be perfected against

Bill No. SB 1366

Barcode 785092

1 third parties as of the date of filing.

2           4. Financing statements required to be filed under  
3 this section shall be maintained and indexed in the same  
4 manner and in the same system of records maintained for the  
5 filing of financing statements in the Florida Secured  
6 Transaction Registry under Article 9 of the Uniform Commercial  
7 Code. The filing of such a financing statement shall be the  
8 only method of perfecting a transfer of storm-recovery  
9 property.

10           5. The priority of a transfer perfected under this  
11 section is not impaired by any later modification of the  
12 financing order or storm-recovery property or by the  
13 commingling of funds arising from storm-recovery property with  
14 other funds, and any other security interest that may apply to  
15 those funds shall be terminated when they are transferred to a  
16 segregated account for the assignee or a financing party. If  
17 storm-recovery property has been transferred to an assignee or  
18 financing party, any proceeds of that property shall be held  
19 in trust for the assignee or financing party.

20           6. The priority of the conflicting interests of  
21 assignees in the same interest or rights in any storm-recovery  
22 property is determined as follows:

23           a. Conflicting perfected interests or rights of  
24 assignees rank according to priority in time of perfection.  
25 Priority dates from the time a filing covering the transfer is  
26 made in accordance with subparagraph 4.

27           b. A perfected interest or right of an assignee has  
28 priority over a conflicting unperfected interest or right of  
29 an assignee.

30           c. A perfected interest or right of an assignee has  
31 priority over a person who becomes a lien creditor after the

Bill No. SB 1366

Barcode 785092

1 perfection of such assignee's interest or right.

2 (6) DESCRIPTION OR INDICATION OF PROPERTY.--The  
 3 description of storm-recovery property being transferred to an  
 4 assignee in any sale agreement, purchase agreement, or other  
 5 transfer agreement, granted or pledged to a pledgee in any  
 6 security agreement, pledge agreement, or other security  
 7 document, or indicated in any financing statement is only  
 8 sufficient if such description or indication describes the  
 9 financing order that created the storm-recovery property and  
 10 states that such agreement or financing statement covers all  
 11 or part of such property described in such financing order.

12 This subsection applies to all purported transfers of, and all  
 13 purported grants or liens or security interests in,  
 14 storm-recovery property, regardless of whether the related  
 15 sale agreement, purchase agreement, other transfer agreement,  
 16 security agreement, pledge agreement, or other security  
 17 document was entered into, or any financing statement was  
 18 filed, before or after the effective date of this section.

19 (7) FINANCING STATEMENTS.--All financing statements  
 20 referenced in this section shall be subject to Part 5 of  
 21 Article 9 of the Uniform Commercial Code except that the  
 22 requirement as to continuation statements shall not apply.

23 (8) CHOICE OF LAW.--The law governing the validity,  
 24 enforceability, attachment, perfection, priority, and exercise  
 25 of remedies with respect to the transfer of an interest or  
 26 right or the pledge or creation of a security interest in any  
 27 storm-recovery property shall be the laws of this state, and  
 28 exclusively, the laws of this section.

29 (9) STORM-RECOVERY BONDS NOT PUBLIC DEBT.--The state  
 30 or its political subdivisions are not liable on any  
 31 storm-recovery bonds, and the bonds are not a debt or a

Bill No. SB 1366

Barcode 785092

1 general obligation of the state or any of its political  
2 subdivisions, agencies, or instrumentalities. An issue of  
3 storm-recovery bonds does not, directly or indirectly or  
4 contingently, obligate the state or any agency, political  
5 subdivision, or instrumentality of the state to levy any tax  
6 or make any appropriation for payment of the bonds, other than  
7 in their capacity as consumers of electricity. This subsection  
8 shall in no way preclude bond guarantees or enhancements  
9 pursuant to this section. All bonds must contain on the face  
10 thereof a statement to the following effect: "Neither the full  
11 faith and credit nor the taxing power of the State of Florida  
12 is pledged to the payment of the principal of, or interest on,  
13 this bond."

14 (10) STORM-RECOVERY BONDS AS LEGAL INVESTMENTS WITH  
15 RESPECT TO INVESTORS THAT REQUIRE STATUTORY AUTHORITY  
16 REGARDING LEGAL INVESTMENT.--The following entities may  
17 legally invest any sinking funds, moneys, or other funds  
18 belonging to them or under their control in storm-recovery  
19 bonds:

20 (a) The state, the investment board, municipal  
21 corporations, political subdivisions, public bodies, and  
22 public officers except for members of the commission.

23 (b) Banks and bankers, savings and loan associations,  
24 credit unions, trust companies, savings banks and  
25 institutions, investment companies, insurance companies,  
26 insurance associations, and other persons carrying on a  
27 banking or insurance business.

28 (c) Personal representatives, guardians, trustees, and  
29 other fiduciaries.

30 (d) All other persons whatsoever who are now or may  
31 hereafter be authorized to invest in bonds or other



Bill No. SB 1366

Barcode 785092

1 obligations of a similar nature.

2 (11) STATE PLEDGE.--

3 (a) For purposes of this subsection, the term  
4 "bondholder" means a person who holds a storm-recovery bond.

5 (b) The state pledges to and agrees with bondholders,  
6 the owners of the storm-recovery property, and other financing  
7 parties that the state will not:

8 1. Alter the provisions of this section which make the  
9 storm-recovery charges imposed by a financing order  
10 irrevocable, binding, and nonbypassable charges;

11 2. Take or permit any action that impairs or would  
12 impair the value of storm-recovery property; or

13 3. Except as allowed under this section, reduce,  
14 alter, or impair storm-recovery charges that are to be  
15 imposed, collected, and remitted for the benefit of the  
16 bondholders and other financing parties until any and all  
17 principal, interest, premium, financing costs and other fees,  
18 expenses, or charges incurred, and any contracts to be  
19 performed, in connection with the related storm-recovery bonds  
20 have been paid and performed in full.

21  
22 Nothing in this paragraph shall preclude limitation or  
23 alteration if full compensation is made by law for the full  
24 protection of the storm-recovery charges collected pursuant to  
25 a financing order and of the holders of storm-recovery bonds  
26 and any assignee or financing party entering into a contract  
27 with the electric utility.

28 (c) Any person or entity that issues storm-recovery  
29 bonds may include the pledge specified in paragraph (b) in the  
30 bonds and related documentation.

31 (12) NOT AN ELECTRIC UTILITY.--An assignee or

Bill No. SB 1366

Barcode 785092

1 financing party shall not be considered an electric utility or  
2 person providing electric service by virtue of engaging in the  
3 transactions described in this section.

4 (13) CONFLICTS.--In the event of conflict between this  
5 section and any other law regarding the attachment,  
6 assignment, or perfection, or the effect of perfection, or  
7 priority of, assignment or transfer of, or security interest  
8 in storm-recovery property, this section shall govern to the  
9 extent of the conflict.

10 (14) EFFECT OF INVALIDITY ON ACTIONS.--Effective on  
11 the date that storm-recovery bonds are first issued under this  
12 section, if any provision of this section is held to be  
13 invalid or is invalidated, superseded, replaced, repealed, or  
14 expires for any reason, that occurrence shall not affect the  
15 validity of any action allowed under this section which is  
16 taken by an electric utility, an assignee, a financing party,  
17 a collection agent, or a party to an ancillary agreement; and  
18 any such action shall remain in full force and effect with  
19 respect to all storm-recovery bonds issued or authorized in a  
20 financing order to be issued under this section prior to the  
21 date that such provision is held to be invalid or is  
22 invalidated, superseded, replaced, or repealed, or that  
23 expires for any reason.

24 (15) PENALTIES.--A violation of this section or of a  
25 financing order issued under this section subjects the utility  
26 that obtained the order to penalties under s. 366.095 and to  
27 any other penalties or remedies that the commission determines  
28 are necessary to achieve the intent of this section and the  
29 intent and terms of the financing order and to prevent any  
30 increase in financial impact to the utility's ratepayers above  
31 that set forth in the financing order. If the commission

Bill No. SB 1366

Barcode 785092

1 orders a penalty or a remedy for a violation, the monetary  
 2 penalty or remedy and the costs of defending against the  
 3 proposed penalty or remedy may not be recovered from the  
 4 ratepayers.

5 Section 2. Paragraphs (m) and (n) of subsection (4) of  
 6 section 679.1091, Florida Statutes, are amended, and paragraph  
 7 (o) is added to that subsection, to read:

8 679.1091 Scope.--

9 (4) This chapter does not apply to:

10 (m) An assignment of a deposit account, other than a  
 11 nonnegotiable certificate of deposit, in a consumer  
 12 transaction, but ss. 679.3151 and 679.322 apply with respect  
 13 to proceeds and priorities in proceeds; ~~or~~

14 (n) Any transfer by a government or governmental unit;  
 15 or

16 (o) A transfer or pledge of, or creation of a security  
 17 interest in, any interest or right or portion of any interest  
 18 or right in any storm-recovery property as defined in s.  
 19 366.8260.

20 Section 3. This act shall take effect upon becoming a  
 21 law.

22  
 23

24 ===== T I T L E A M E N D M E N T =====

25 And the title is amended as follows:

26 Delete everything before the enacting clause

27

28 and insert:

29 A bill to be entitled

30 An act relating to storm infrastructure

31 recovery; creating s. 366.8260, F.S.; providing

Bill No. SB 1366

Barcode 785092

1 definitions; authorizing electric utilities to  
2 petition the Florida Public Service Commission  
3 for certain financing orders for certain  
4 storm-recovery purposes; providing  
5 requirements; providing powers and duties of  
6 the commission in issuing such orders;  
7 specifying procedures and requirements for the  
8 commission in issuing financing orders;  
9 authorizing electric utilities to create  
10 storm-recovery property; providing for pledge  
11 of storm-recovery property to secure  
12 storm-recovery bonds; providing for retirement  
13 of storm-recovery bonds under certain  
14 circumstances; providing for judicial review of  
15 such orders; providing for effect of such  
16 orders; providing exceptions to commission  
17 jurisdiction to issue financing orders;  
18 providing limitations; prohibiting the  
19 commission from requiring use of storm-recovery  
20 bonds for certain purposes; specifying duties  
21 of electric utilities; specifying properties,  
22 requirements, permissible activities, and  
23 limitations relating to storm-recovery property  
24 under certain circumstances; providing for  
25 security interests in storm-recovery property;  
26 providing for perfecting security interests in  
27 storm-recovery property; providing for priority  
28 of and resolution of conflicting interests;  
29 providing requirements, procedures, and  
30 limitations for sale, assignment, or transfer  
31 of storm-recovery property; providing

Bill No. SB 1366

Barcode 785092

1 requirements for descriptions or indications of  
2 storm-recovery property transferred, granted,  
3 or pledged, or indicated in a financing  
4 statement; subjecting financing statements to  
5 certain provisions of law; specifying that  
6 storm-recovery bonds are not public debt;  
7 specifying storm-recovery bonds as legal  
8 investments for certain entities; specifying  
9 certain state pledges relating to bondholders;  
10 declaring certain entities as not electric  
11 utilities under certain circumstances;  
12 specifying effect of certain provisions in  
13 situations of conflict; providing for  
14 protecting validity of certain bonds under  
15 certain circumstances; limiting commission  
16 authority to issue certain financing orders  
17 after a time certain; amending s. 679.1091,  
18 F.S.; specifying nonapplication of secured  
19 transactions provisions of the Uniform  
20 Commercial Code to interests in storm-recovery  
21 property; providing an effective date.

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